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LECTURE

Before the Honolulu Lyceum, delivered at the "Bethel" Church, on the evening of March 12, 1858,

BY THE HON. DAVID L. GREGG.

[☞ His Majesty having heard from many quarters such reports of the lecture delivered on the evening of Friday, last week, by the Hon. D. L. Gregg, as made him desire a perusal of it, applied to that gentleman, through a proper channel, for a copy of the same. Finding that report was more than sustained by the character of the document itself, the King caused the lecture to be transmitted to us for publication, and although it reached us so late that we can only give place to a portion of it this week, we cannot but congratulate the public upon the course the King has pursued. The lecture will serve for a text book, and in a place where society contains so large a portion of aliens as it here does, it cannot fail to be valuable as well as interesting to a very large class of readers.—*Polynesian, March* 20.]

The large audience here assembled, far beyond my anticipation—embracing as it does, persons among the foremost in respectability and intelligence of the community admonishes me that, in responding to the invitation of the "Honolulu Lyceum," I have taken upon myself a task hard to perform acceptably to them, or satisfactorily to myself. Yet I am in some degree reassured, when I reflect that I look only upon friendly faces, and may count upon all the charitable forbearance which the occasion can demand.

The subject I propose to discuss may, at first view, seem to be dry and devoid of popular interest, as it involves the consideration and application of legal principles. There are those, I know, who affect to regard such questions with something like horror, and to shrink from meeting them, as if they did not closely concern all the rights, the privileges and the enjoyments of society.

But such, evidently, is not the sentiment of the audience I have the honor to address. Their attendance here to-night betokens not only an appreciation of the praiseworthy association formed by the young men of Honolulu for the purpose of mutual improvement, but, I flatter myself, some degree of interest also, in the topic which has been announced as the subject of my remarks.

My attention was at first directed to a different question concerning *the dignity of the mechanic arts and their bearing on society*, but the absence of suitable books of reference deterred me from venturing upon its consideration. A public library is a great need in this metropolis, and I hope the time is not far distant when means will be provided, by individual enterprise, to establish something of the kind, corresponding with the wants of an intelligent community, accessible to all the reading classes of the public, and so well selected and arranged that no one who seeks information will be disappointed in the object of his search.

Thus circumstanced, I very naturally, and, as I hope you may not think unwisely, had recourse to the "tools of trade" within my reach, and determined to ask your attention for a short time to some observations bearing upon *the position of aliens in foreign countries*.

I do not purpose the suggestion of new theories or doctrines. It is my intention rather to collate from sound authorities, to allude to old and well established principles more or less familiar to all, and to consider their effect upon society. Of course, then, what I have to offer will consist mainly in a statement of what has been settled by elementary writers, stated in judicial decisions, and recognised by treaties, municipal laws or general practice.

The consideration of some of the rights and prerogatives of sovereign states is an essential preliminary in determining the position of individuals living under their jurisdiction. Indeed, the two subjects of national prerogative and personal rights are so closely blended that a discussion of the one necessarily involves, to some extent, the other.

Nations are defined to be free and independent communities, acknowledging no common superior, arbiter or judge in regard to their conduct—existing in what has been called a state of nature in respect to each other—governing themselves by their own laws, and enjoying the right of self-preservation, without accountability for the rules or motives by which their policy is dictated.

They are also equal, with the same obligations and rights derived from nature. "Power or weakness," says Vattel, "does not, in this respect, produce any difference. A dwarf is as much a man as a giant; a small republic is as much of a sovereign state as the most powerful kingdom.

Hence, he concludes, as a necessary consequence of this equality, that what is permitted to one nation is permitted to all; and what is not permitted to one is not permitted to any other.

This perfect natural equality of nations, whether great or small, weak or powerful, is strenuously insisted on by all respectable text writers, and assumed in the adjudications of judicial tribunals wherever Christian civilisation exists. Such equality may be regarded as inalienable, except by modifications arising from positive compact, or general consent implied from constant usage in respect to certain external objects, such as rank, titles and ceremonial distinctions. Beyond these external objects, which chiefly apply to precedence enjoyed by some of the European states, called *royal honors*, the exceptions do not extend.

It does not concern my present purpose to refer to such of the *primitive* or *absolute* rights of every sovereign state, as the right of self-preservation and self-defence, and the right of increasing its national dominions and power by all innocent and lawful means. These, international law establish, and all the world admit. I confine myself, then, to the consideration of those points which have an immediate bearing upon the rights of person and of property.

It is a principle universally recognised, that every independent state is entitled to the exclusive power of legislation in regard to the personal rights and civil condition of its citizens in regard to all real and personal property within its territory to whomsoever it may belong. The sovereignty of the state is absolute in this respect, and admits of no qualification not dependent upon treaty stipulations.

Foreign laws have no force, except what results from utility and mutual convenience, according to the maxim —*ex comitate, ob reciprocam utilitatem.* Thus, legislalative and judicial acts done in foreign countries, are generally respected on the ground of equity and common good, provided they do not contravene any prohibitory enactment. *Huberus*, an ancient and most excellent writer, lays down these general rules:

"1. The laws of every state have force within the limits of that state and bind all its subjects.

"2. All persons within the limits of a state are considered as subjects, whether their residence is permanent or temporary.

"3. By the comity of nations, whatever laws are carried into execution within the limits of any state are to be regarded as having the same effect elsewhere, so far as they do not contravene the rights of other states and their citizens or subjects."

These rules are recognised by the courts of all civilized countries.

Thus, testamentary arrangements or conveyances, regular and valid in the United States, Great Britain and France, would doubtless be recognised as valid and binding in this kingdom, so far as both aliens and subjects might be concerned. But the Hawaiian Courts would not be bound to give them effect if they contravened any public policy or statute, or even led to any inconvenience of an important character.

Real property is always stamped by the laws of the country where it is situated, and thus, by strict right, is independent of the control of all foreign decisions or legislation. It is governed in regard to title, tenure and descent by the local laws, and not by dissimilar rules which may prevail in other countries.

The general maxim of international jurisprudence recognizes the *lex loci rei sitae*, with such exceptions as duly regard the rights of local jurisdiction and sovereignty.

Most of the European countries formerly prohibited aliens from holding real real estate within their dominions, probably upon the idea that the possession of such property, although conveying no allodial right, was inconsistent with proper local dependence. According to the theory of the feudal system, this prohibition seems to have been defensible on account of peculiar obligations to the lord paramount in whom the title was supposed to be primarily vested. This rule of feudalism has been essentially modified in modern practice, though there is but little uniformity on the subject in the municipal regulations of different states. The want of access to authorities prevents me from venturing upon as full a discussion of this point as would otherwise be appropriate.

In Great Britain, and some of the States of the American Union, alienage is deemed a bar to the inheritance of real property. The general rule in the latter, perhaps is, that though an alien may take an estate in lands, as *by purchase*, he cannot take by act of the awl, as by *descent*. Most of the newer States of the Union, however, impose no hindrance upon the acquisition or sale, or inheritance of real property.

The French laws governing real estate seem to be more just, and more in accordance with the liberal spirit of the age, than those which generally prevail in other countries. By an ordinance adopted July 14, 1819, foreigners in France are admitted to the right of possessing both real and personal property, and of taking by succession, *ab intestato*, or by will in a like manner with native subjects. The same rule has been established in the Hawaiian kingdom since June 28, 1854.

The tendency of modern times is to do away with all such restrictions upon the ownership of property as are likely to fetter enterprise, and hinder the accumulation of national wealth. France has set an admirable example in this respect, which all other countries would do well to follow.

It is universally admitted that the law of the place where the owner of personal property was domiciled at the time of his decease, governs the succession, *ab intestato*, as to his personal effects wherever they may be situated. This is also true in regard to instruments relating to personal property. *Locus regit actum.* The law where a deed is executed, and where the parties making it were domiciled, governs its construction.

Ordinarily, the personal qualities of individuals travel with them wherever they go, such as citizenship, legitimacy and illegitimacy, minority and majority, idiocy and lunacy, bankruptcy, marriage and divorce—qualities determined by place of birth, by condition, by time, by law or by judicial decision.

Thus the general rule may be stated, but it is subject to important exceptions. For example, it is well settled to be the right of every sovereign state to naturalize foreigners and to confer upon them the privileges of

domicile—to give them special privileges as aliens, to which they can prefer no natural claim whatever.

The rules of naturalization are as diverse as the different nationalities.

In Great Britain, an Act of Parliament was formerly required in each particular case, but in 1844 it was provided that aliens might, on taking an oath to disclose conspiracies against the crown, to defend the succession as limited to the House of Hanover, and to renounce allegiance to any other person claiming or pretending a right to the crown of the British realm, obtain a certificate of naturalization from the Secretary of State for the Home Department. Such certificate gives al the rights of native-born subjects except that of being a member of the Privy Council or either House of Parliament. To remove this restriction recourse must be had to the legislative authority. No renunciation of natural allegiance by oath, is required in Great Britain as a pre-requisite to naturalization. In the British colonies, the local legislatures are authorized to prescribe rules of naturalization, subject however, to the allowance or disallowance of the home government.

France makes a distinction between civil rights and citizenship. The former belong to every resident, the latter to those who enjoy the requisite condititition. I cannot speak with any particularity on the subject however, because I do not possess the facility of reference to the existing laws of France. But it is quite certain that the French Government deals in the most liberal manner with aliens who seek a home within its empire.

In Naples, naturalization is conferred for services after one year, and in other cases after residence varying from five to ten years. Within the German confederacy no German can be treated as an alien.

Nomination to a public office gives the right of citizenship in Prussia, and the superior authorities are empowered to naturalize any stranger, with certain exceptions, who satisfies them of his good conduct and means of subsistence.

Employment as a public functionary gives the rights of citizenship in the Austrian dominions. Otherwise a residence of ten years is required.

In Bavaria, naturalization is acquired by royal decree, by marriage with a native woman, and by domicile with proof of freedom from foreign allegiance.

The Sovereign of the Kingdom of Netherlands may confer the rights of naturalization at his pleasure.

In Russia, naturalization is acquired by taking the oath of allegiance to the Emperor, but naturalized strangers may at any time renounce their allegiance and return to their country.

The Hawaiian Kingdom is content with good character and a simple oath of allegiance, without any abjurations or renunciations whatever. With these qualifications, she bids the stranger from every land a cordial *aloha nui*, and welcomes him within her borders.

In the United States, a residence of five years is required, one of which must be in the State of domicile, with qualifications of good character, and attachment to the principles of the Federal Constitution. Naturalization is a judicial and not executive act, and all application for citizenship must be supported by proof of a formal declaration of intention two years previous to the application, and compliance with all the other established requirements. The citizenship of the husband confers citizenship on the wife, although an alien at the time of her marriage. The children of citizens born abroad, inherit the condition of their parents.

Thus it seems that American requirements for naturalization are much more stringent than those which exist in the principal European states. Whence then comes the clamor of American demagogues against naturalized citizens? It is founded in dishonesty,—it is supported by bigotry, and kept alive so far as it still lives, by dishonorable jealousies which can only exist in the weakest or most wicked minds.

It is hardly necessary to observe that the effect of naturalization is to identify the person naturalized with the state which takes him to its bosom. He thenceforward is associated with its fortunes;—he is bound to sustain it through good and through evil report, in preference even to the land of his birth;—he is pledged to maintain its character in the face of all opposition. His duties are in no manner different from the duties of those born on the soil he has voluntarily made his own;—his fealty is measured by a standard not less exacting than theirs.

He may perhaps, eventually return to his natural allegiance by a change of domicile, and thus re-acquire his original rights, but until then, his political state is fixed;—his obligations are plain;—his course marked out by the dictates of propriety and of law. He has chosen his country and he must abide its destiny.—

The doctrine of the publicists is, that whenever a child attains his majority, according to the law of his domicile of origin, he becomes free to change his nationality and choose another domicile. Even in countries, as Great Britain, which theoretically refuse the liberty of expatriation, the original tie is held as binding only in the interest of the State to which the individual belonged, without affecting, with reference to his adopted country, the validity of the naturalization acquired there. Thus, it has been decided by the Court of Queen's Bench in England, that a British born subject might become a citizen of the United States, and by virtue of such citizenship, be entitled to all the advantages of trade between the two countries.

Whatever particular theories of allegiance may be, the right of expatriation has been settled by general practice, and the right of expatriation clearly carries with it the right of a transfer of allegiance.

In the case of Thrasher, in 1851, Mr. Webster, then at the head of the Foreign Department of the United States, discussed this question in all its bearings, and sustained the doctrine I have stated. Thrasher was by birth a citizen of the United States, but domiciled in the island of Cuba, in accordance with the requirements of Spanish law. On a charge growing out of the expedition of the filibuster Lopez, he was accused of conspiracy, or treason—tried, condemned to eight years imprisonment at hard labor, and sent to Spain in execution of the sentence. He applied to the country of his nativity to protect him against the consequences of an offence committed against the country of his adoption, but such protection was refused on the ground that by his own voluntary act, he had changed his domicile to the jurisdiction of a foreign country, and

was therefore subject to the full operation of all its laws in regard to his personal and private rights.

It has been held by the Supreme Court of the United States that a person who removes to a foreign country, —settles himself there and engages in the trade of the country, furnishes by these acts such evidence of an intention permanently to reside in that country, as to stamp him with its national character. A mere floating or indefinite intention of returning to his original residence is not sufficient to rebut the general presumption to be derived from his general conduct. The British courts have laid down the same rules.

A removal of domicile involves a change of allegiance, and in settling the question of domicile, the chief point to be considered is the *animus manendi*, or intenton of continued residence. This is always to be determined by reasonable rules and the general principles of evidence. If it appears that the intention of removing was to make a permanent settlement, or a settlement for an indefinite time, the right of domicile with all its obligations, is immediately established. Acts and not words constitute the criterion of decision in such cases.

It is unquestionably true that the subject or citizen of any government going temporarily into a foreign country, though he owes local and temporary allegiance, is yet, if he performs no other act changing his condition, entitled to the protection of his own government against arbitrary acts of oppression in regard to his person or his property. In such a case the interposition of his government would be justifiable. This principle has been repeatedly asserted by the United States, Great Britain, France and other powers, and it may be considered as established beyond all reasonable doubt.

It is a general theory that the local tribunals of a country are sufficiently enlightened and upright to take care of the rights of resident aliens, and such theory is usually justified by experience. There are but few exceptions to the rule that foreign courts in civilized nations will in some manner determine upon such subjects, when properly submitted to them for adjudication.

But a foreigner residing in any country owes to that country allegiance and obedience to its laws so long as he remains in it. This duty is imposed by the mere fact of residence and temporary protection, and he is bound to the same extent as native citizens or subjects. Thus, foreigners of every nation, within this kingdom, rest, for the time being, under an obligation as full and perfect as the native born or naturalized subject, to respect the laws and observe their requirements.

It can make no difference whether such laws are the same or not as those to which they have been accustomed. Their change of domicile, or their temporary residence, is presumed to be voluntary, and they are not, therefore, entitled to complain because their peculiar preferences are not respected. When they go to Rome they must conform to the laws, the usages and the customs of the Roman people, or at least yield them a becoming deference.

The protection afforded to naturalized citizens, or those clothed with nationality by virtue of domicile, is not regarded as extending so far as to defend them against the authorities of their native country in case they voluntarily return to it. If, for instance, a native of Great Britain has incurred penalties or assumed duties while under the jurisdiction of that country, he cannot plead his subsequent naturalization in the United States, or the Hawaiian kingdom, or any other country, as a bar to the operation of the laws of his original allegiance, if by his own act he places himself within reach of their operation. A naturalized citizen is entitled to the protection of the laws and authorities of the country of his adoption, but native character reverts on a return to original jurisdiction, in all its primitive force and extent.

Had Koszta, the Hungarian, gone with his own accord within the limits of Austrian jurisdiction, no rights pertaining to his newly acquired domicile in the United States could have shielded him from the legal consequences of the political offences with which he was charged.

It is a well settled principle that every nation, whenever its laws are violated by any one owing obedience to them, whether a citizen or a stranger, has a right to inflict all the penalties incurred by the transgressor, if found within its jurisdiction. An alien resident may commit treason and be punished for it, as well as a subject. Many other instances could be cited in illustration, but the limits of a brief discourse are insufficient to allow it.

I must pass rapidly over the cases in which the *status* of the alien as to personal rights and personal property is concerned, without even undertaking to glance at more than a very few of the effects of what is called the *lex domicilii*, or the *lex loci contractus*. A course of lectures alone would suffice to give a complete development to the subject.

A bankrupt's certificate of discharge in the country of which he is a subject or where the contract was made, is by the general consent of European and American law, considered valid to discharge the debtor in every other country; but there are disputes among jurists as to the control and distribution of the personal property of bankrupts under foreign jurisdictions.

The marriage ceremony is always governed by the law of the place where it is celebrated. If valid there, it is valid everywhere, upon the ground that infinite mischief would otherwise ensue in regard to legitimacy, succession, and other personal and proprietary rights.

Marriage is truly, and as a large majority of the Christian world believe, irrevocably contracted, by competent parties, in accordance with the forms and prescriptions of the local law. Otherwise, a mutual promise merely, is the essential feature of its validity. If the parties, by way of ceremony, jump over a broomstick, as at Gretna Green, or go through any other fantastic performance recognized as proper by the State, they contract a tie regarded by all civilized countries as binding, and to which the Divine law gives its highest sanction.

The mutual promise is the essential feature prescribed by Christian ethics. Aside from natural and moral obligations, the ability of parties to contract matrimony depends upon municipal laws.

There are certain exceptions to the universality of municipal jurisdiction, relating to the person of a foreign

sovereign or chief executive officer, his political representatives, and his public armed vessels, which are too well understood to require discussion.

Private vessels, such as whalers and merchant ships, undoubtedly subject themselves for the time being, to the jurisdiction of the countries to which they resort. While in port and within the territorial jurisdiction of any country, they are under the supervision of the local authorities.

If they commit offences they are liable to seizure, or if they escape, they may be pursued by a national armed vessel upon the high seas and brought back for adjudication.

The high seas are the common property of the world. All nations enjoy the right of police over them, in regard to crimes against civilization, such as piracy, and also in regard to their own citizens, and offences in violation of their municipal jurisdiction. Exclusive territorial jurisdiction, it is well understood, is limited to a marine league from the shore, but this by no means excludes a wider range of supervision, with due regard to the rights of others, within that space of the world which all nations agree in considering the common property of mankind.

The recent action of Commodore Paulding in capturing Walker, the self-styled President of Nicaragua, was perhaps, technically illegal, because he went to the extent of landing upon the soil of a foreign country. But it will not be disputed that the seizure of that arch pirate and filibuster on the high seas, would have been justifiable on the ground that he was escaping from the United States under circumstances which involved a gross violation of law and a crime against the comity of international neighborhood. Commodore Paulding deserves applause and not censure for his conduct, and he may confidently rely for vindication not only upon the sober second thought of his country, but upon the judgment of the whole civilized world. The pretence set up by certain members of Congress, that the vessels of the American Government have no right of police beyond the limits of a marine league from the shore, is too absurd to require refutation. In asserting such a position they give neither evidence of legal learning nor sound judgment.

The general rules in regard to the judicial power of independent States are thus stated by the publicists :— It extends—

1. To the punishment of all offences against the municipal laws of the State, by whomsoever committed within its territory.

2. To the punishment of all such offences, by whomsoever committed, on board of its public and private vessels on the high seas, and on board of its public vessels in foreign ports.

3. To the punishment of all such offences by its subjects wheresoever committed.

4. To the punishment of piracy and all other offences against the law of nations, wheresoever and by whomsoever committed.

A reference to one other point will bring my discussion of this branch of the subject to a close.

It is undoubtedly the duty of every government to protect the persons and the property of all residents within its jurisdiction. The duty of obedience to the authority of the State results from the protection it is presumed to be able to afford. These obligations are reciprocal,—obedience on the one side, protection on the other. The grand object of all government is the welfare and security of its subjects. It is instituted for their benefit, and according to the highest authorities derives its powers from their consent, either expressly given or understood by fair implication.

I do not propose to enlarge upon the theory. It will be enough to illustrate it by a few practical cases.

Thus, if the property of citizens or aliens be destroyed by a hostile invasion, it is not the invader who is responsible, but the local government. Had the town of Honolulu, in 1849, been laid in ashes, foreign residents could not have looked to France for indemnity—their only recourse would have been upon the Hawaiian nation. When Copenhagen was bombarded in 1807, there was no pretence of British responsibility to foreigners who suffered in the destruction of their property. After the bombardment of Antwerp in 1830, there was an attempt to hold Belgium to account, because that city became a part of its dominions, but the kingdom of the Netherlands was finally compelled to make indemnity, for the reason that the property of foreigners destroyed was at the time under its jurisdiction.

There is another memorable instance—that of Greytown—within the memory of all who hear me, where the property of French and English residents was involved in the just destruction inflicted upon that infamous nest of robbers and pirates.

France made a semi-official demand of indemnity on the American government, but the reply of Mr. Marcy to the Count Sartiges was deemed so conclusive as to put an end to the question. Lord Palmerston, when interrogated in Parliament in regard to British losses at Greytown, distinctly admitted the correctness of Mr. Marcy's positions, and declared that no just ground of reclamation existed against the United States. A case is stated in Mr. Marcy's dispatch which fully illustrates the principle I have laid down. In 1852 an Englishman named Mather was maltreated in Florence by an officer of the Austrian garrison there stationed. The British government very properly demanded satisfaction from Tuscany, but the reply was made that the government of the party who committed the outrage ought to make the required indemnity. The conclusive rejoinder alledged, that inasmuch as the wrong was done within Tuscan territory, there was no rightful claim upon Austria for redress without assuming that Tuscany was a dependency of the Austrian empire. Though Tuscany, as Mr. Marcy says, was most reluctantly forced to tolerate an Austrian garrison in Florence, over which it could exercise no control, it yet ultimately recognised its liability for an outrage perpetrated within its territory, and made the satisfaction demanded by the British government.

It is not my province nor would it be at all becoming for me to discuss the question of political policy suggested by this view of international law. I may observe, however, that it is obviously the clear duty of every government to provide, within its means, all the military and police force necessary for the protection of persons and property within its jurisdiction. A judicious expenditure for such an object can never be a loss to the community or to the State.

Public defence is a duty of all governments, and it is the moral if not the legal obligation of those who enjoy their protection to contribute to make it effectual. Happily there is no lack of inclination or of spirit here, as may be seen in the arrangement of the police—in the admirable discipline of the national troops, though few in number, and in the volunteer organization of citizen soldiers, which is the just pride of the community. This brief and somewhat incongruous discussion of international relations, has necessarily carried with it a very full consideration of alien rights. So far, then, I have confined myself within the scope of the subject announced for consideration.

It remains to add a few words in regard to other sources of alien right, not less important than that already taken into account. Of these, the most prominent are treaties of peace, alliance and commerce, which constitute a source of international law in declaring, modifying, or defining the extent of its pre-existing requirements. The practical law of nations may be inferred from treaties, for while it is true that one or two treaties varying from the general custom and usage of nations cannot alter the international law, yet a succession of them establishing a particular rule, will go far to prove what that law is on a disputed point. Some of the most important modern improvements in the international code have originated in treaties.

The personal rights of travellers and strangers in foreign countries have in this manner been materially enlarged. It is now the practice of all civilized natiing in forming treaties, to insist upon stipulations entitlons their citizens or subjects abroad to privileges far beyond those they would have been entitled to receive under previous general usage.

Thus, the right of passing through, and residing in a foreign country is divested of many of its ancient restrictions,—difficulties of acquiring and disposing of property are removed,—security is established against extraordinary searches, seizures and unequal exactions,—the freedom of local trade, to a greater or less extent, is guaranteed, and liberty of conscience more or less recognized.

So also the *jus albinagii* as the Roman law termed it, or the *droit d'aubaigne* according to the French Code, by which the property of a deceased foreigner was confiscated to the State, has been practically abolished by treaty stipulations. The same observation may be applied to the *droit de detraction*, or *droit de retraite* which imposed a tax on the removal of property acquired by succession or testament, to a foreign jurisdiction.

By these and similar mutual concessions, it is easy to perceive, the general convenience of the world has been promoted, and the interests of humanity subserved. Could other barriers which separate States and peoples be broken down, how much greater might be the progress of art, of science and all those social ameliorations which characterize this age!

The spirit of the treaties between the governments of the United States and Great Britain, and that of the Hawaiian Kingdom may serve to illustrate in some degree, the tendency of all modern international arrangements, and it may not be deemed inappropriate to refer briefly to some of their provisions, more especially as they have a bearing upon the civil condition of many of those I have the honor to address.

Both are formed upon the basis of reciprocity and equality of mutual rights, and experience shows that they answer well the ends they were intended to subserve.

The American treaty concluded Dec. 20, 1849, establishes the reciprocal liberty of commerce and navigation, putting each party on an equal footing with the nation most favored by the other, in respect to customs, and imposts of every description, privileges, drawbacks and allowances, both as regards direct and indirect trade. Duties of tonnage, harbor, light houses, pilotage, quarantine and others of a similar character in respect to direct voyages of ships with cargoes, and in respect to any voyage if in ballast, are mutually limited to the rates imposed in like cases upon national vessels. The coasting trade of each country is reserved to its own ships.

American steam vessels employed in the Pacific Ocean in carrying the public mails of the United States, are entitled to free access to Hawaiian ports for the purpose of refitting, refreshing, landing passengers and their baggage and transacting any business pertaining to the mail service without being subject to tonnage, harbor, light house or other similar duties of whatever nature or denomination.

Whaleships may have access to the different ports enumerated in the treaty, and to certain others since specified by law, for the purpose of refitment and refreshment, and where, with an exemption from tonnage and harbor dues, they may trade or barter goods or supplies, excepting spirituous liquors, to the extent of twelve hundred dollars, invoice value, two hundred of which is entirely free from duties. They may pass from port to port for the purpose of procuring supplies, but Honolulu, Lahaina and Hilo are the only places where their passengers may be landed, and their seamen shipped and discharged. Places not ports of entry to merchant vessels, being open to whalers, are also open to public armed ships.

The aid of the local authorities of each country is pledged for the reclamation of deserters from the ships of the other, and the mode of proceeding in such cases pointed out. Wrecks are protected under rules mitigating as far as possible, the effects of their disaster, and vessels driven into port by stress of weather, or accident, incur none of the duties usually paid for the benefit of the State, unless they engage in trade beyond the limits of subsistenee and repairs, or protract their stay to an unnecessary extent.

The right of mutual trade in each others' territories is established;—an interchange of mails is regulated, and the mutual surrender of persons charged with certain crimes provided for.

Liberty of conscience is recognized. Neither country can disturb or molest the citizens of the other on account of religious belief.

The article in regard to personal privileges may appropriately be cited at length. It is in the following words :

"The contracting parties engage, in regard to the personal privileges that the citizens of the United States of America shall enjoy in the dominions of His Majesty the King of the Hawaiian Islands, and the subjects of His said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hindrance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heirs and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. Where, on the decease of any person holding real estate within the territories of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states. The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions, other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations in the respective states of the high contracting parties. They shall be exempt from all military service, whether by land or by sea; from forced loans, and from every extraordinary contribution not general and by law established. Their dwellings, warehouses and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to their houses, and no arbitrary examination or inspection whatever of the books, papers or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal, and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states, shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively."

Finally, to guard against all interruptions of harmony, and good correspondence, it is provided that any citizen or subject of either party, infringing the provisions of the treaty, shall be held individually responsible for such infringement, and that neither of them will in any way protect the offender, or sanction his wrongful act.

The British Treaty of July 10, 1851, is almost identical with the American Treaty. The same remark is also applicable to the more general features of the treaties with Denmark, Norway and Sweden, Bremen and Hamburg. They all contain a stipulation of parity with the most favored nation, and therefore whatever rights and privileges are established by one accrue to the benefit of all.

Thus merchandise or goods, except wines, brandies and other spirituous liquors, imported into the Hawaiian Kingdom from the United States, Great Britain and the other countries named, can only be subjected to a duty of five per cent *ad volorem*, because the French Treaty of March 26, 1846, imposes this limitation, and France, so far, stands in the most favored position. So also in regard to aliens from those countries, charged with criminal offences against Hawaiian laws, their consuls respectively, being empowered under the rule of parity, to nominate jurors for the acceptance of the courts.

But aside from the general principles of international law applicable to all civilized countries, and treaty stipulations only directly binding between the immediate parties to them, the condition of aliens in foreign countries may, very materially, depend upon the municipal laws under which they live.

Every nation is entitled to determine for itself, in this respect, the line of policy it will pursue. Liberality or illiberality affords no ground of offence to the rest of the world. It is presumed to understand its own condition,—to know its own wants and necessities, and to comprehend the best methods of dealing with them. Nations as well as individuals have the right,—if they choose to exercise it,—to be churlish, distrustful and repulsive,—to ignore the requirements of hospitality, and make themselves disagreeable to all their neighbors.

There is no country in the world where the alien is received with a more cordial welcome than in the Hawaiian Kingdom,—no country where his person is more secure, or his interests more favored. His right of industrious employment, of acquiring property, managing and disposing of it without restraint, is unlimited. There is no "dark lantern" inquisition upon his movements, no ungenerous suspicion of his intentions. He may go and come as he pleases, without restraint. The courts are open to his appeals for justice, and the law throws around him the shield of its protection.

If he chooses to transfer his political allegiance, naturalization at once invests him with the same privileges enjoyed by native subjects. The platform of his rights, as well as the field of his duties, is co-extensive with theirs. There are no reservations to his disadvantage, no discriminations to create inferiority, no petty jealousies to bear him down. He is a stranger no longer, but one of the national household, and among its most cherished members.

It is plain that this generous policy,—this confidence and good will,—merits a return of friendly support. Upon the principle of gratitude merely, for important favors, voluntarily conceded, it deserves a full reciprocation of loyalty to Hawaiian interests and zeal for public welfare.

The policy of a government thus liberal and confiding to the alien, ought not to be met with illiberal criticisms, with efforts to thwart its purposes, and paralyze its exertions for the common good, with ill-timed sneers against its rulers and subjects on account of race, or physical peculiarity.

The foreigner whether alien or naturalized, who pursues such a course, deserves to be expelled from all decent society. He is untrue to his own interests,—unfaithful to the dictates of generosity and gratitude,—false to the wishes and policy of the government under whose jurisdiction he originated. He takes favors, but ridicules the complexion of the

hand that bestows them,—he fawns and cringes to obtain personal benefits and then curses the donor because he belongs to a different variety of the human family. This description of persons, of whom there are happily but few in these islands, always make bad and turbulent citizens, more fit for the supervision of the correctional police, than for the enjoyment of civil rights and privileges. If the world was rid of them by the hangman's process, or by act of Providence, the general interests of society would be vastly promoted.

It is the wish of all the leading nations of the world to see these Islands continue in a state of independence,—to advance their importance, and promote their prosperity. Commercial interests, not less than political considerations, dictate this desire, and they must lead to its realization. Under the blessing of Providence, the Hawaiian nation will long remain in the family of Sovereign States, and quite as long, we may expect, it will continue to afford a happy home to aliens of every country.

Hawaii nei is a favored land, and the God of the Universe who governs all things wisely, will protect its Sovereign and its people in the possession of their international and political rights. This result all governments desire, and all good citizens and residents will seek to promote.